



CITY OF HAYWARD

AGENDA REPORT

Meeting Date 6/24/03

Agenda Item 2

TO: Planning Commission

FROM: Tim R. Koonze, Assistant Planner

SUBJECT: Appeal of the Planning Director's Denial of Variance No. PL-2004-0117 – Dindo & Glenda Lahip (Applicants/Owners) – Request for a Variance to Allow a 3-Foot-8-Inch Side Yard for a Patio Room Addition where a 5-Foot Setback Is Required

The Property Is Located at 881 Saint Bede Lane in a Single-Family Residential (RS) District

RECOMMENDATION:

Staff recommends that the Planning Commission:

1. Find that the proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) Guidelines, Section 15305, Class 5 (a), Minor Alteration in Land Use Limitations.
2. Deny the appeal and uphold the Planning Director's denial of the application subject to the attached findings.

DISCUSSION:

The property is located mid-block on Saint Bede Lane easterly of Patrick Avenue. The house located on this parcel was constructed in 1959. A building permit was issued for an extension to the rear of the house in 1963. Sometime between 1963 and 1986, according to City aerial photos, a patio was constructed on the west side of the house. The patio cover was installed 3 feet 8 inches from the side yard property line where 5 feet is required. The date of construction is uncertain as no building permits were issued. The patio existed when the current owners purchased the property in 1997. In 1997, a permit was issued for termite repairs to various parts of the house including the patio, however, it should be noted that a maintenance permit does not sanction illegal construction. The current owner enclosed the patio to create a room attached to the home. In 2003, additional maintenance and improvements were done without permits, such as new windows, doors, and reroofing the patio. It was during the reconstruction of the roof that a City inspector noticed that work was being performed without permits and a stop work order was issued to the owner. It was the City's intervention that prompted the owner to request a variance for the patio room.

On March 29, 2004, the Planning Director denied the variance application as staff could not make the required findings. The owners filed an appeal letter on April 12, 2004, stating that they were unaware that there was a required 5-foot setback, that they never intended to violate City codes, that they had already invested substantially towards the improvements to the patio room, and that there are other similar violations in the neighborhood. The lack of knowledge of City Ordinances and the applicant's economic investment are not appropriate findings to justify a variance.

In order to approve a variance, the following three findings must be made:

1. There are special circumstances applicable to the property including size, shape, topography, location, or surroundings, or other physical constraints;
2. Strict application of the Zoning Ordinance deprives such property of privileges enjoyed by other property in the vicinity under the same zoning classification; and
3. The variance does not constitute a grant of a special privilege inconsistent with the limitations upon other properties in the same vicinity and zone in which the property is situated.

It is staff's opinion that this standard rectangular (50' x 100'), flat property possesses no special circumstances or physical constraints that would justify the approval of a variance. The property is similar in shape and size to other properties in the area and throughout the City. If the patio cover were altered to comply with the required setback, it could still function as a patio room and meet the requirements of the zoning ordinance.

The appellant claims that there are a number of other side yard encroachments in the neighborhood (see attachment). However, city records indicate that no variances have been approved in this neighborhood to allow encroachments into the required side yards. Therefore, the granting of this variance would allow this property owner to have a special privilege inconsistent with the other properties in the neighborhood. The facts that the owner constructed the patio cover without knowledge of the City ordinances, that there was no intention to violate city codes are not justifications for approving a variance, and that there has been substantial money invested are not considerations in whether the decision as to whether the patio can remain or not. The owner's appeal letter included photographs of other additions in the neighborhood that have been constructed similar to their patio (see Attachment C). City records reveal that no building permits have been issued for structures within the required setback areas. Any violations will be directed to Community Preservation for enforcement action.

If the Planning Commission were to find that allowing the variance is appropriate, findings would have to be made accordingly. A condition of approval would also be required so that the roof overhang would maintain a separation of 3 feet from the side property line. A bedroom window, which opens into the patio room, would have to be relocated, also necessitating interior modifications, e.g. relocating a closet.

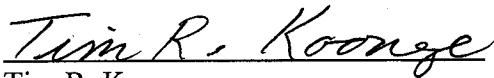
Environmental Review:

The proposed project is categorically exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15305, Class 5 (a), Minor Alterations of Land Use Limitations.

Public Notice:

On, March 29, 2004, a notice of decision denying the requested side yard variance was mailed to all property owners and tenants within 300 feet of the subject property and to all interested parties. On June 11, 2004, a Notice of Public Hearing for the Planning Commission meeting was mailed. There have been no responses received as a result of the notices.

Prepared by:



Tim R. Koonze
Assistant Planner

Recommended by:



Dyana Anderly, AICP
Planning Manager

Attachments:

- A. Area Map
- B. Findings for Denial
- C. Appeal Letter with Photographs
- Site Plan



FINDINGS FOR DENIAL

Variance No. PI-2004-0117

Dindo & Glenda Lahip (Applicants/Owners)

June 24, 2004

- A. The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15305, Class 5 (a), Minor Alteration in Land Use Limitations.
- B. There are no special circumstances applicable to the property regarding this variance request in that the property is relatively flat and typical in size and shape to other properties in this residential development.
- C. Strict application of the Zoning Ordinance would not deprive such property of privileges enjoyed by other properties in the vicinity under the same zoning classification in that no other properties in the vicinity have been granted a variance for encroachment in to the required side yard.
- D. The variance would constitute a grant of a special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated in that other properties in the vicinity are required to maintain the required side yards.

4-12-04

CITY OF HAYWARD
DEPARTMENT OF COMMUNITY & ECONOMIC DEVELOPMENT
777 B STREET
HAYWARD, CA 94541

SUBJECT: VARIANCE APPLICATION PL-2004-0117
881 SAINT BEDE LANE

ATTENTION: MR. TIM KOONZE
ASSISTANT PLANNER

DEAR MR. KOONZE

OUR APPLICATION OF MARCH 15, 2004 REGARDING SUBJECT WAS DENIED BECAUSE THE EXISTING SETBACK OF 4' DID NOT MEET THE 5' MIN. AS REQUIRED BY THE CITY. AS STATED IN YOUR LETTER DATED MARCH 29, 2004. WITH DUE RESPECT TO YOUR DEPARTMENT. WE THEREFORE APPEALING OUR REQUEST REGARDING SUBJECT DUE TO THE FOLLOWING REASONS:

1. IF WE KNOW THAT THE 5' MIN. SETBACK IS A REQUIREMENT, WE SHOULD'NT HAVE MADE ANY IMPROVEMENT / RENOVATION TO THE EXISTING PATIO / STRUCTURE WITH EXISTING 4' SETBACK.
2. WE NEVER INTENDED NOT TO FOLLOW YOUR CITY CODE AND OTHER REQUIREMENTS.
3. WE ARE ALMOST DONE WITH THE IMPROVEMENT AFTER SPENDING A SUBSTANTIAL AMOUNT.
4. AFTER THE DENIAL OF OUR VARIANCE APPLICATION, IT IS NOT OUR INTENTION TO BRING TO YOUR ATTENTION BUT A CLARIFICATION / EXPLANATION OF OTHER EXISTING PROPERTIES WITH SIMILAR SETBACK VIOLATIONS. WE ONLY DISCOVERED THESE AFTER CHECKING AROUND OUR NEIGHBORHOOD. PLEASE SEE ENCLOSED PICTURES FOR YOUR REFERENCE WITH SPECIFIC ADDRESSES.

IN LIGHT OF ALL THESE FACTS, WE HUMBLY REQUEST FOR YOUR RECONSIDERATION AND UNDERSTANDING THAT OUR VARIANCE APPLICATION BE APPROVED.

THANK YOU

DINDO B. LAHIP
GUENDA R. LAHIP

ATTACHMENT C

**DUE TO THE LENGTH OR COLOR
OF THE REFERENCED EXHIBIT,
IT HAS BEEN ATTACHED AS A
SEPARATE LINK.**